

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Petition of CRC Communications of Maine and Time Warner Cable, Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended)))))	WC Docket No. 10-143

**COMMENTS OF LINCOLNVILLE NETWORKS, INC.,
TIDEWATER TELECOM, INC., OXFORD TELEPHONE COMPANY,
AND OXFORD WEST TELEPHONE COMPANY**

Lincolnvill Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company ("Lincolnvill and Oxford RLECs")¹ hereby submit these comments in opposition to the Petition for Preemption ("Petition") filed by CRC Communications of Maine, Inc. ("CRC") and Time Warner Cable Inc. ("TWC") (collectively the "Petitioners") in the above captioned proceeding, in accordance with the Public Notice issued by the Commission on July 29, 2010.² For the reasons stated herein, the Lincolnvill and Oxford RLECs respectfully request that the Petition be denied.

I. The MPUC Order is in Complete Accord with the Telecommunications Act.

The Petition claims that the Commission must preempt the Order of the Maine PUC ("MPUC") dated May 5, 2008 (the "MPUC Order").³ The Petition is replete with the exaggerated

¹ The Lincolnvill and Oxford RLECs are telecommunications carriers, incumbent local exchange carries ("ILECs") and rural telephone companies ("RLECs") as defined in 47 U.S.C. §§ 153 & 251(h) located in rural areas of Maine.

² *Public Notice*, WC Docket No. 10-43, DA 10-1423, issued July 29, 2010.

³ The Petitioners' spin strategy begins with labeling the MPUC Order at issue as the "Section 251(a) Order." Thus, they attempt to create the impression that the fundamental duty of Section 251(a), that all telecommunications carriers must interconnect, is under attack by the MPUC Order. But this is not the case. As an honest reading of the MPUC's Order will disclose, the MPUC's Order confirms the duty of RLECs under Section 251(a).

and misleading mantra that the FCC must preempt the MPUC Order because it supposedly denies “CRC’s right to interconnect under Section 251(a).”⁴ The MPUC did no such thing. The MPUC clearly affirmed that the RLECs’ duty under Section 251(a) continues to fully apply. Thus, the rights of CRC under 251(a) are completely undisturbed. The National Broadband Plan, upon which the Petitioners greatly rely, is in accord with the MPUC on this point.⁵ There is no issue in this case with respect to Section 251(a), despite the rhetoric of the Petitioners.

The Petitioners also assert repeatedly that the MPUC Order prohibits them from providing telecommunications services. Again, the Petitioners err and mislead. The MPUC Order prohibits nothing. The MPUC Order clarifies the circumstances under which an RLEC has the obligation to engage in negotiation and to be subject to the MPUC’s arbitration authority to resolve disputes under the TelAct, and correctly states that an RLEC is exempt from those obligations unless its rural exemption is terminated in accordance with Section 251(f)(1). The MPUC Order comports precisely with the relevant precedent (and no applicable federal authority to the contrary is cited by the Petitioners). First, the Commission’s decision in the *Z-Tel* case makes clear that the general interconnection duty of Section 251(a) is not implemented through the negotiation and arbitration process in Section 252.⁶ The MPUC acted in accord with the *Z-Tel* decision. Second, the

⁴ Examples include Petition, p. i, l. 6-7 (“The MPUC has denied CRC’s basic right to interconnect and exchange traffic pursuant to Sections 251(a) and 251(b)...”); Petition, p. 2, l. 7-8 (“By preempting the MPUC’s order denying CRC’s right to interconnect under Section 251(a)...”); Petition, p. 14, l. 9-10 (“that order denied CRC the ability to interconnect and exchange traffic with the RLECs in question under Section 251(a) and (b)...”)

⁵ Footnote 93 states: “All telecommunications carriers have a basic duty to interconnect under Section 251(a). See 47 U.S.C. §251(a). A rural carrier’s rural exemption under Section 251(f) does not impact this obligation. See 47 U.S.C. §251(f)(1).”

⁶ *In the matter of CoreComm Communications, Inc., and Z-Tel Communications, Inc. v. SBC Communications, Inc. et al., Order on Reconsideration*, File No. EB-01-MD-017, 19 FCC Rcd 8447 (2004)(“*Z-Tel*”) at 8454-8455 (¶18). Paragraph 18 states “Neither the general interconnection obligation of Section 251(a) ... is implemented through the negotiation and arbitration scheme of Section 252.” See also footnote 44 to paragraph 18:

Section 251(c) obligates incumbent LECs “to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [*i.e.*, subsection (c)].” 47 U.S.C. § 252(a)(1), permits ILECs to negotiate

Commission's decision in the Telephone Number Portability case makes clear that RLECs are not subject to the negotiation obligations with respect to Section 251(b) duties unless the rural exemption is first terminated.⁷ The MPUC acted in accord with the Telephone Number Portability decision. Finally, the decision of the U.S. District Court in the Brazos case confirmed the clear structure of the TelAct as set forth in the Z-Tel and Telephone Number Portability decisions. The MPUC acted in accord with the Brazos decision.⁸

In effect, the Petitioners are complaining about the structure of the Tel Act as enacted and intended to work by Congress. They specifically seek to avoid their obligation under the Tel Act to demonstrate that the rural exemption of an RLEC should be terminated under Section 251(f)(1) in order for the RLEC to be subject to mandatory negotiation and arbitration obligations. The Petitioners should not be allowed to make use of a petition for preemption under Section 253 to avoid their legal obligations for obtaining certain prerequisites for interconnection and features as established by Congress.

II. The National Broadband Plan is not Applicable Precedent and not Reasoned Precedent.

The Petitioners' claim that the OBI staff, who drafted the National Broadband Plan, have already conducted the pertinent legal analysis⁹ is not correct. Moreover, even if analysis were done

agreements "without regard to the standards set forth in subsections (b) and (c) 251," but does not mention subsection 251(a).⁶

(The Z-Tel decision was vacated on appeal on grounds separate from this issue.)

⁷ See *In the Matter of Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, RM-8535, 12 FCC Rcd 7236 (1997) ("LNP Recon Order"). The Commission stated:

We note, however, that Section 251(f)(1) does exempt rural carriers from the duty to negotiate in good faith over the terms and consideration so agreements to fulfill the duties of Section 251(b), including number portability.

⁸ *Sprint Communications Company L.P. v. The Public Utility Commission of Texas*, Case No. A-06-CA-065-SS, filed August 14, 2006 (W.D. Texas) ("Brazos").

⁹ Petition, p. 17, l. 6.

and presented by staff, it is not a substitute for the precedent already established by the determinations of the Commission and the U.S. District Court, all of which were reached in accordance with administrative and judicial due process. The recommendations of the OBI Staff (and the letter of TWC's lawyer upon which they rest) are not law, and it is incorrect and misleading for the Petitioners to cite them in a manner to suggest they are law.

III. The Timing of Petition for Preemption is Unreasonable.

The Petitioners' sense of jurisprudence would undermine the stability of the law, as it has been properly determined by the Commission, the Brazos Court, and the MPUC. Parties and regulatory bodies must be able to place reliance on the decisions of regulatory bodies in making their legal and business decisions and expending resources in the pursuit of their business plans and litigation strategies. The TWC approach – including its actions before the MPUC, the filing of the TWC Interconnection Ex Parte, TWC's citing its own self-fulfilling prophecy in the National Broadband Plan, and the belated petition to preempt a two year old state PUC decision (and a 2006 court decision) – is part of a strategy to assure that the law shall be as TWC says it should be, and when TWC says it should be. The RLECs respectfully submit that the Commission should determine the law according to what Congress, the Commission, the Brazos Court and the MPUC rightfully determined to be the law, and decline to adopt the law according to TWC.

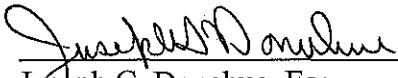
IV. Conclusion.

For all of the reasons stated herein, the Lincolnville and Oxford RLECs respectfully request

that the Commission dismiss the Petition in its entirety.

Respectfully submitted,

Lincolnvile Networks, Inc., Tidewater
Telecom, Inc., Oxford Telephone Company,
and Oxford West Telephone Company

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